1840.

SUPREME COURT OF THE UNITED STATES.

No. 152.

BENJAMIN. G. HUMPHREYS, APPELLANT,

vs.

LEGGETT, SMITH & LAWRENCE.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term in the year of our Lord one thousand eight hundred and forty-six.

B. G. HUMPHREYS,
vs.
LEGGETT, SMITH & LAWRENCE,

Be it remembered, that heretofore, to wit, on the 17th day of May, 1845, came Benjamin G. Humphreys, by his solicitor Henry T. Ellett, into the clerk's office of said court, and filed his certain bill herein against Leggett, Smith & Lawrence, which bill, with the exhibit thereto, is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the southern district of Mississippi.

Benjamin G. Humphreys, of the county of Claiborne, and a citizen of the State of Mississippi, brings this his bill against Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York.

And thereupon your orator complains and says that, on the tenth day of November, A. D. 1837, your orator and one John Grissom became sureties on the official bond of Richard J. Bland, then elected sheriff of Claiborne county, which bond was in the penalty of fifteen thousand dollars, payable to Charles Lynch, Governor of said State of Mississippi and his successors in office, and conditioned for the faithful performance, by the said Bland, of all the duties of the said office of sheriff.

Your orator further showeth that, on the third day of March, A. D. 1839, the said Leggett, Smith & Lawrence instituted an action upon said bond, on the law side of this honorable court, in the name of Alexander G. McNutt, Governor of said State of Mississippi, successor of said Charles Lynch, for the use of them, the said Leggett, Smith and Lawrence, against the said Bland and your orator and said Grissom, his sureties, to recover damages against them for an alleged breach, by said Bland, of the condition of said bond; and such proceedings were afterwards had thereupon in said court, that, at the November term of the court aforesaid, A. D. 1839, and on the twenty-six day of said month, the said action was dismissed as to said Grissom, and it was considered by the court that the plaintiff take nothing by said bill, and that the defendants, Bland and Humphreys, go thereof without day, and recover their costs, &c.; all which will more fully appear by reference to the record and proceedings in said cause, now remaining in

this honorable court, which are hereby referred to and made part of this bill.

And your orator further sheweth, that the plaintiffs in said action, after the judgment aforesaid, removed said cause to the Supreme Court of the United States, by appeal or writ of error, and afterwards, to wit, at the January term, A. D. 1844, of said Supreme Court, the aforesaid judgment of this honorable court was reversed, the death of said Bland was suggested and ordered to be entered upon the record, and the said cause ordered to be remanded to this court, with directions to your honors to enter judgment against your orator alone, in favor of the said plaintiff. That on the day of February, A. D. 1845, the mandate of the said Supreme Court was filed in the clerk's office of this court, and on the fourteenth day of May, 1845, your honors entered judgment on the law side of this court against your orator in favor of said plaintiff for the sum of six thousand three hundred and fifty-five dollars and thirty-three cents, with costs, as by reference to said proceedings and judgment, now of record in said court, will more fully appear.

Your orator further sheweth unto your honors, that, from the commencement of said suit in this court by said Leggett, Smith & Lawrence, until after the said judgment of reversal in the said Supreme Court, your orator had no notice or knowledge whatever of said suit, or of any of said proceedings. He states that no process was ever served, or attempted to his knowledge to be served, on him. He admits that the deputy marshal has made a return that he executed process, in said cause, upon your orator personally, on the 14th day of October, A. D. 1839. But your orator states, that the said return is absolutely untrue in point of fact. Your orator has, on this 15th day of May, 1845, discovered that he can prove, by at least one credible and competent witness, that the deputy marshal made the said return at the request of said Bland, and without pretending to have in fact executed said writ, said Bland stating to said deputy that he wished said suit kept secret from your orator, and that he (said Bland) would give it every attention and save the said deputy and your orator from all harm. Your orator states that it was some time after the decision of the case in the Supreme Court that he first heard of such a suit; that he never knew of it before, never employed counsel or consulted with them in either court, and never authorized any person to enter an appearance for him. Your orator insists that, on this ground alone, said judgment ought to be perpetually enjoined; but, if your honors should think differently, he insists that it is competent for him to shew the facts in order to avoid any imputation of laches that might otherwise attach to him in reference to subsequent proceedings to which your orator will now refer.

Your orator sheweth, that in the spring of the year A. D. 1840, the said Richard J. Bland, he still being sheriff of said county, was found to be greatly in arrear for money collected by him on executions, and for his failure to execute divers writs of fieri facias, and other writs, which had come to his hands as such sheriff to be executed, and at the

same time it was ascertained that the said Bland was nearly destitute of property, and insolvent to a large amount. And your orator sheweth, that at the May term, A. D. 1840, of the circuit court of Claiborne county, the President, Directors, and Company of the Planters' Bank of the State of Mississippi, on motion before the said court, recovered a judgment against the said Richard J. Bland, sheriff as aforesaid, and your orator, his surety upon the said official bond of said Bland, dated November 10th, A. D. 1837, and set forth in the declaration in said suit of A. G. McNutt, use of said Leggett, Smith and Lawrence, for the sum of twelve thousand three hundred and twenty-five dollars and twenty-two cents, damages for a breach of the condition of said bond. And said Bank, also in like manner, at the same term of said court, recovered another judgment against said Bland and Humphreys, for the sum of twenty-six hundred and seventy-four dollars and seventy-five cents, being the amount of the balance of the penalty of said official bond after deducting the said recovery of $12,325 22, whereby the full amount of the penalty of the said bond in said declaration mentioned was exhausted by recoveries against the said Bland and your orator, except as to the sum of *three cents*, for which there appears to be a mistake made in the calculations; and your orator sheweth, that executions were issued on the judgments so recovered by the said Planters' Bank; that the property of your orator was all levied on by the coroner of Claiborne county under said executions, and was sold about the twenty-third day of September, A. D. 1840, at the court-house door, and the full amount of the said two judgments of the Planters' Bank was thereby made and collected, and the full penalty of the official bond of said Bland, given Nov. 10, 1837, was thereby satisfied and paid by your orator; your orator annexes and files herewith transcripts of the said judgments and proceedings in favor of said Planters' Bank, marked exhibits A and B, and makes the same part of this bill. He states that he was also surety for said Bland on a sheriff bond given in November, A. D. 1839, on which judgments were also obtained against him, and levied on the same property, which will explain any apparent want of perspicuity in the coroner's returns. Your orator also states, that at the time of the recovery of the above named judgments of the Planters' Bank against him, he had no notice or knowledge whatever of the pendency of said suit of McNutt, use of Leggett, Smith and Lawrence. And your orator sheweth, that as soon as he heard of the existence of the said suit, which was not until after the reversal of the judgment of this court by the said supreme court, he applied to counsel, and prepared a plea to be filed in said case, setting up his defence thereto; but your honors not conceiving it competent to do any thing but obey the mandate of the supreme court, refused to permit your orator to file said plea, and left him to seek other remedy. Your orator files herewith the plea by him offered as aforesaid, and rejected by the court, with his affidavits thereto appended and attached, marked exhibit C, and makes the same part of this bill.

To the end, therefore, that the said defendants may, if they can, shew why your orator should not have the relief hereby prayed, and may

upon their oaths, and to the best of their knowledge, remembrance, and belief, full, true, and perfect answer make to all the matters stated in the forgoing bill; and that the said Leggett, Smith and Lawrence be enjoined from taking out any execution upon the judgment obtained by them against your orator, or from executing the same, and from taking any step or proceeding upon said judgment against your orator until your honors shall make order to the contrary; and that upon final hearing of the cause said injunction may be made perpetual, or that your orator may have such other and further relief as your honors may think meet, and may be agreeable to equity and good conscience.

May it please your honors to grant your orator process of subpœna against the said Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, commanding them to appear before your honors on a certain day therein to be named, to answer this bill, and to stand to, and abide by, such order and decree as your honors may make in the premises; and he will ever pray, &c.

H. T. ELLETT,
Sol. and counsel for complainant.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Personally appeared before the undersigned, commissioner for said district, Benjamin G. Humphreys, who made oath that the matters stated in the foregoing bill, as of his own knowledge are true, and those derived from the information [of others] he believes to be true.

BENJAMIN G. HUMPHREYS.

Sworn to and subscribed this 16th day of May, 1845.

W. H. BROWN, *U. S. Commissioner.*

Copy of the original record and proceedings referred to and made part of said bill.

ALEXANDER G. McNUTT, use, &c.
vs.
RICHARD J. BLAND et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the 28th day of March, in the year of our Lord one thousand eight hundred and thirty-nine, came Alexander G. McNutt, Governor of the State of Mississippi, and the successor of Charles Lynch, who sues for the use of Leggett, Smith and Lawrence, by Norcom and Mason, his attorneys, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum against Richard J. Bland et al.

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Richard J. Bland, Benjamin G. Humphreys, and John Grissom, citizens of the State of Mississippi, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Alexander G. McNutt, Governor of the State of Mississippi, and the successor of Charles Lynch, who sues for the use of Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late copartners under the firm and style of Leggett, Smith and Lawrence, of a plea that they render to him the sum of fifteen thousand dollars, which they owe to, and unjustly detain from him, to his damage fifteen thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 28th day of March, A. D. 1839, and of the independence of the United States the 63d.
[L. S.]

WM. BURNS, *Clerk*.

Marshal's return.—Executed on R. J. Bland, personally, on 5th April, 1839.

W. M. GWIN, *Marshal*,
Per JOHN HUNTER, *D. M.*

And on the same day of suing out the writ aforesaid the plaintiff, by his attorney aforesaid, filed his declaration herein, which is in the words and figures following, to wit:

Ninth judicial circuit, United States circuit court, May term, 1839.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Richard J. Bland, Benjamin G. Humphreys, and John Grissom, citizens of the State of Mississippi, were summoned to answer Alexander G. McNutt, Governor of the State of Mississippi, and successor of Charles Lynch, who sues for the use of Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late copartners in trade under the name and style of Leggett, Smith and Lawrence, of a plea that they render to him the sum of fifteen thousand dollars, which they owe to, and unjustly detain from him.

For that, whereas, the said defendants, by the names of Richard J. Bland, Benjamin G. Humphreys, and John Grissom, heretofore, to wit, on the 10th day of November, in the year 1837, by their writing obligatory, sealed with their seals, and now here shown to the court, bear-

ing date the day and year aforesaid, acknowledged themselves to be held and firmly bound unto Charles Lynch, Governor of the State of Mississippi, and his successors in office, in the sum of fifteen thousand dollars above demanded, to be paid to said plaintiff or his successors in office, which bond contains the following conditions, to wit: The conditions of this obligation are such, that whereas the above bound Richard J. Bland was duly elected by the qualified electors of the county of Claiborne sheriff of said county, at an election held therein on the sixth and seventh days of November, A. D. 1837, for the term of two years as prescribed in the constitution; now, therefore, if the said Richard J. Bland shall well and truly collect all fines, forfeitures, and amerciments accruing to, or being due to the State, or any county within the same, which may lawfully come into his hands for collection against any person or persons residing in, or being found within, the county of which he is sheriff, and shall punctually pay all such fines, forfeitures, amerciments, so collected, to the person or persons entitled by law to receive the same, and shall also well and truly execute and due return make of all process and precepts to him lawfully directed, and pay and satisfy all sums of money by him received by virtue of any such process or precepts to the person or persons to whom the same are due, his, her, or their lawful attorney, executor, administrator, or assigns, and in all things shall truly and faithfully execute and perform the duties of the said office of sheriff during the time of his continuance therein, then this obligation to be void, otherwise to remain in full force and virtue.

And the said plaintiff avers that the said above bound Richard Bland, sheriff as aforesaid, hath not well and truly kept and performed the the conditions of the above bond, and hath not fully and faithfully executed and performed the said office of sheriff; in this, that the said plaintiff avers that the said Leggett, Smith and Lawrence, by their attorney, prosecuted their certain suit in the United States circuit court, for the district of Mississippi, held at the town of Jackson, and said State of Mississippi, at the May term of said court, for the year 1837, against George W. McNider, when by the judgment and consideration of said court, the said Leggett, Smith and Lawrence, recovered of said defendants, on the 17th day of November, in the year 1837, the sum of thirty-nine hundred and ten $\frac{78}{100}$ dollars for their damages, and the costs of suit in their behalf expended; and that on the 30th day of December, in the year 1837, a writ of capias ad satisfaciendum was sued out, by said Leggett, Smith and Lawrence, of said court, against the body of said George W. McNider, directed to the marshal of the State of Mississippi, and which was placed in the hands of the said marshal of the State of Mississippi for execution; and the marshal of the State aforesaid did, whilst the said writ was in full force and virtue, by virtue of said writ delivered to him, take into his custody the body of said George W. McNider, and did, after the said taking, turn over and deliver the same, at the said county of Claiborne, for safe keeping, to Richard J. Bland, the defendant, one of the obligors in said bond, who was then and there the acting sheriff in and for the county of Claiborne and State of Mississippi;

and the plaintiffs allege that said Richard J. Bland, then and there, whilst said writ was in full force and virtue, did, in violation of his duty as sheriff, discharge, release, and set at liberty said prisoner, to wit, the said George W. McNider, not by force or operation of law, or pursuance of any power or process emanating therefrom, but in violation thereof, and without the license or consent of said plaintiffs, Leggett, Smith and Lawrence, or of their lawful agent or attorney, and against their will, they, the said plaintiffs, being wholly unsatisfied and unpaid, and said judgment aforesaid being then and there in full force and effect, and not in any respect reversed or annulled, paid off or discharged, whereby an action has accrued to said plaintiffs to demand the sum of fifteen thousand dollars from said defendants. Yet the said defendants, though often requested, have not, as yet, paid the sum of money above demanded, or any part thereof, to said plaintiffs, but to do so have wholly failed and refused, and still refuse so to do, to the damage of said plaintiffs fifteen thousand dollars, and therefore they sue.

NORCOM & MASON,
Plaintiffs' Attorney.

Copy of bond sued on.

Know all men by these presents, that we, Richard J. Bland, Benjamin G. Humphreys, and John Grissom, of the county of Claiborne, and State of Mississippi, are held and firmly bound by these presents unto Charles Lynch, Governor of the State of Mississippi for the time being, and unto his successors in office, in the sum of fifteen thousand dollars, lawful money of the United States, to be paid to the said Charles Lynch, Governor of the State of Mississippi, and to his successors in office; and for the faithful payment thereof, well and truly to be made, we, and each of us, bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this tenth day of November, A. D. 1837.

The condition of the above obligation is such, that whereas the above bound Richard J. Bland was duly elected by the qualified electors of the county of Claiborne sheriff of said county, at an election held therein on the sixth and seventh days of November, A. D. 1837, for the term of two years as prescribed in the constitution. Now, therefore, if the said Richard J. Bland shall well and truly collect all fines, forfeitures, and amerciments accruing to or being due to the State, or any county within the same, which may lawfully come into his hands for collection against any person or persons residing or being found within the county of which he is sheriff, and shall punctually pay all such fines, forfeitures, amerciments, so collected, to the person or persons entitled by law to receive the same; and shall also well and truly execute, and due return make, of all process and precepts to him lawfully directed, and pay and satisfy all sums of money by him received, by virtue of such process or precepts, to the person or persons to whom the same are due, his, her, or their lawful attorney, executors, admin-

istrators, or assigns, and in all things shall truly and faithfully execute and perform the said duties of the office of sheriff during the time of his continuance therein, then this obligation to be void, otherwise to be and remain in full force and virtue.

R. J. BLAND, [SEAL.]
BENJ. G. HUMPHREYS, [SEAL.]
JOHN GRISSOM. [SEAL.]

THE STATE OF MISSISSIPPI, *Claiborne county, ss:*

I, Nicholas McDougall, esq., judge of probate in and for said county, do hereby approve of the within and foregoing bond, and securities thereto.

Given under my hand and seal, this 15th day of November, A. D. 1837. N. McDOUGALL, [SEAL.]
Judge of Probate.

THE STATE OF MISSISSIPPI, *Claiborne county:*

I, Richard J. Bland, do solemnly swear, that I will support the Constitution of the United States, and the constitution of the State of Mississippi so long as I remain a citizen thereof, and will in all respects execute and perform the duties of the office of sheriff of Claiborne county to the best of my skill and abilities, so help me God.

R. J. BLAND.

Sworn to and subscribed before me, this 15th day of November, A. D. 1837. N. McDOUGALL, *Judge of Probate.*

THE STATE OF MISSISSIPPI, *Claiborne county, ss:*

I, John Witherall, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript contains a true copy of the bond given by R. J. Bland, esq., sheriff of the said county of Claiborne, as the same appears of record in my office.

Given under my hand and seal of office, this 8th day of February, A. D. 1839. JOHN WITHERALL, *Clerk.*
By J. L. WESTON, *D. C.*

And afterwards, to wit, on the 20th day of June, in the year of our Lord 1839, a writ of alias summons was issued from the clerk's office of the court aforesaid, which, with the endorsement and return thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, as before we commanded you, without delay, to summon Richard J. Bland, Benjamin G. Humphreys, and John Grissom, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to Alexander G. McNutt, Governor of the State

of Mississippi, and the successor of Charles Lynch, who sues for the use of Thomas Leggett, Jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late copartners under the firm and style of Leggett, Smith & Lawrence, of a plea that they render to him the sum of fifteen thousand dollars, which they owe to and unjustly detain from him, to his damage fifteen thousand dollars; and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default.

And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 20th day of June, A. D. 1839, and of the independence of the United States the sixty-third.

[L. S.]

WM. BURNS, *Clerk*.

To be executed on Humphreys and Grissom only.

Marshal's return.

Executed this writ on B. G. Humphreys personally on the 14th day of October, 1839; J. Grissom not found in my district.

W. M. GWIN, *Marshal*.
Per JNO. HUNTER, *D. M.*

And the said defendants, Richard J. Bland and Benjamin G. Humphreys, come and defend the wrong and injury, when and where, &c., and for plea say, plaintiffs their action aforesaid ought not to have and maintain, &c., because they say, by an act of the Legislature of the State of Mississippi, passed June 22d, 1822, entitled "an act to reduce into one the several acts concerning executions, and for the relief of insolvent debtors," it is among other things provided, that when an insolvent person shall not be able to satisfy or pay his ordinary prison fee, if the creditor upon notice given him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailor for the payment of such prison fees, or shall fail to pay the same when demanded, the sheriff or jailor shall discharge such debtor out of prison; and it is further provided by said act, that "whereas it is unreasonable sheriffs should be obliged to go out of their counties to give notice to creditors at whose suit any person may be in the custody of such sheriff.

That where any execution shall be delivered to the sheriff of any other county than that where any creditor resides, such creditor shall name some person in the county where the execution is to be levied to be his, her, or their agent, for the particular purpose for giving to and receiving from the sheriff any notices which may be necessary relating thereto; and if any creditor shall fail to appoint such agent, the sheriff shall not be obliged to give notice, previous to the discharge of such prisoner, for want of security for his prison fees, but such prisoner shall be discharged without any notice to be given to the creditor so failing.

And these defendants aver, that at the time the said George W. McNider was committed to the custody of the said sheriff of Claiborne county, as in plaintiff's declaration is stated, and ever since, until said

prisoner was discharged, the said Leggett, Smith and Lawrence were not residents of the said county of Claiborne, nor did they appoint any agent or attorney to receive notice as aforesaid within said county, and the said George W. McNider was then and there, to wit, at Claiborne county, at the time of said commitment insolvent and unable to satisfy or pay his ordinary prison fees, and the said Leggett, Smith and Lawrence then and their wholly failed and refused to give security to the said sheriff of Claiborne county aforesaid, or to the jailor thereof, for the payment of the said prison fees, and therefore the said sheriff, defendant as aforesaid, lawfully discharged the said George W. McNider out of prison as aforesaid; all of which these defendants are ready to verify; wherefore, they pray judgment, &c., whether, &c.

CHAPLAIN, WINCHESTER & BLACK,
Attorneys for defendants.

And for further plea defendants say, actio non; because they say that the said George W. McNider, after his said commitment to the custody of the said sheriff of Claiborne county, to wit, on at , was regularly and according to the provisions of the acts of the legislature of the State of Mississippi for the relief of insolvent debtors, brought before Nicholas McDougall, a judge of probate, duly commissioned in and for the said county of Claiborne, and then and there having complied with all the requisitions of the said acts, was by the order of the said judge of probate, and by warrant from the said judge of probate, then and there lawfully discharged from the said custody of the said sheriff, as appears by the record thereof now here in court produced; all of which these defendants are ready to verify; wherefore, they pray judgment, whether, &c.

CHAPLAIN, WINCHESTER & BLACK,
Attorneys for defendants.

And said plaintiffs, for replication to the plea by said defendants first above pleaded, say, that at the time of the discharge of said prisoner, George W. McNider, these plaintiffs had an agent residing within the district of Mississippi, to wit, in the county of Warren, the State aforesaid, this attorney of record, and known to said McNider, and that no application was made whatever to these plaintiffs or their agent for the payment of jail fees, or to give security for the same; nor was any notice whatever given either to these plaintiffs, or their agent, or attorney, of an intention to discharge, or of an application of said prisoner to be discharged, either for that cause or any other, from the custody and safe keeping of said defendant Bland; and this they are ready to verify, &c.; wherefore, they pray judgment, &c.

NORCOM & MASON,
Plaintiffs' Attorneys.

And said plaintiffs, for replication to the plea secondly above pleaded by said defendants, say, that the prisoner aforesaid, George W. McNider, was, by virtue of process legally issuing from the circuit court of the United States for the district of Mississippi, taken into custody by the

marshal of said district, and by him was delivered to the said defendant Bland for safe keeping, who was then acting as sheriff, and was sheriff of the county in which said prisoner was taken; and said plaintiffs say said McNider was not discharged from said custody aforesaid by virtue of any process emanating from any court of the United States, or judge thereof, nor by virtue of any law of the United States; but these plaintiffs say, that said prisoner was discharged contrary to the provisions of the several acts of Congress made and provided, prescribing the mode and manner of discharging prisoners confined under process from the courts of the United States; and said plaintiffs say, that neither they nor their agent and attorney of record, residing within the district of Mississippi, were served with notice of such discharge, or intended application by the prisoner to be discharged from custody; and therefore they say said George W. McNider was not duly and legally discharged from confinement as aforesaid. And this they are ready to verify; therefore they pray judgment, &c.

NORCOM & MASON.
Plaintiffs' Attorneys.

And the said Bland and Humphreys, by their attorneys Chaplain, Winchester, and Black, come and defend, &c.; and, for replication to to the plaintiffs' replication to defendant's first plea, say, that plaintiffs their action, &c., ought not to have and maintain, &c., because they say, the matters and things in said replication contained are not good and sufficient in law, in manner and form as in said replication set forth, to entitle the plaintiffs to maintain their said action against them; and this they are ready to verify; wherefore, they pray judgment, &c., and for special answer of demurrer they set down the following:

1st. Said replication neither admits or denies the plea of the defendants first above pleaded.

2d. Said replication is single.

3d. Said replication does not aver any matter good as an answer to defendant's said first plea.

CHAPLAIN, WINCHESTER & BLACK,
Defendant's attorneys.

And the said defendants, for rejoinder to plaintiffs' replication to the second plea of defendants above pleaded, say, actio non, because they say the matters and things in said replication contained, in manner and form as therein set forth, are not good and sufficient in law to entitle plaintiffs to maintain their said action, &c.; and this they are ready to verify. Wherefore, they pray judgment, &c.; and for special causes of demurrer to second replication defendants set down the following:

1st. Said replication contains no answer to defendant's second plea.

2d. Said replication is argumentative.

3d. Said replication is informal, imperfect, and otherwise insufficient.

CHAPLAIN, WINCHESTER & BLACK,
Defendant's attorneys.

And the said plaintiff by his attorney comes and defend, and says, that the plaintiffs' replication to said defendant's first plea, and the matters and things therein contained, in manner and form as the same are set forth, and pleaded and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his said action against him, the said defendant; and this he is ready to verify, as the court shall here direct and award.

Wherefore, as the said defendants have not answered the said replication, nor in any manner denied the same, the said plaintiffs pray judgment, and *his* debt, and damages assessed, &c.

NORCOM & MASON,
Plaintiffs' attorneys.

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, came the parties aforesaid, by their respective attorneys, and on motion of the said plaintiffs by *his* attorney, it is ordered that this cause be discontinued as to the defendant John Grissom; and thereupon the matters of law arising upon the demurrer of the defendants to the plaintiffs' replication to the first plea, and also the plaintiffs' demurrer to the second plea of the said defendants, being fully argued, it is ordered that said demurrer be sustained.

Therefore, it is considered by the court, that the plaintiffs take nothing by *his* bill, and the defendants go thereof without day, and recover against the said Leggett, Smith and Lawrence their costs by them about their defence in this behalf expended.

UNITED STATES OF AMERICA,
Southern district of Mississippi, circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing thirteen pages, and what is contained on this page, contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court, at Jackson, this 30th day of April, A. D. 1844.

W. H. BROWN, *Clerk.*
Per CHAS. H. ROGERS, *D. C.*

Copy of Exhibit A.

THE STATE OF MISSISSIPPI, *Claiborne county, ss:*

Pleas before the honorable George Coalter, judge of the first judicial district of the State of Mississippi, at a circuit court begun and held at the court-house, in and for the county of Claiborne, and State aforesaid, on the fourth Monday and twenty-fifth day of May, A. D. eighteen hundred and forty.

THE PRESIDENT, Directors, and Company of the Planter's Bank of the State of Mississippi, plaintiffs,
versus
RICHARD J. BLAND, sheriff of Claiborne county, Benjamin G. Humphreys and John Grissom, his securities, defendants.

Be it remembered, that at the May term of our said court, A. D eighteen hundred and forty, the plaintiffs in the above stated case, by attorney, entered upon the motion docket of our said court their certain motion, which is in the words and figures following, to wit:

THE PRESIDENT, Directors, and Company of the Planter's Bank of the State of Mississippi,
vs.
RICHARD J. BLAND, sheriff of Claiborne county, Benjamin G. Humphreys and John Grissom, his securities.

Motion for judgment against Richard J. Bland, who was sheriff of Claiborne county, and against Benjamin G. Humphreys and John Grissom, his securities, for the amount of the execution of the said President, Directors, and Company of the Planter's Bank of the State of Mississippi, against Passmore Hoopes, Joseph H. Moore, and John M. Carpenter, issued 12th December, A. D. 1838, and returnable to the May term of the circuit court of said county, to be holden in the year of our Lord 1839, directed and delivered to the said Bland as sheriff of said county, commanding him to make of the goods and chattels, lands and tenements, of the said Hoopes, Moore, and Carpenter, the sum of ten thousand five hundred and twenty-four dollars and forty-four cents, with interest at the rate of eight per cent. per annum thereon from the 4th day of December, A. D. 1838, until paid, together with the sum of twenty-four dollars costs of suit; this motion is for judgment for the amount of said execution, with five per cent. damages on said amount, and interest at the rate of eight per cent. per annum until paid, and for the reason that the said Bland, sheriff as aforesaid, failed to return the said execution on the return day thereof. JAMES H. MAURY,
Attorney for the motion.

And on the twentieth day of May, A. D. eighteen hundred and forty, the following entry appears upon the minutes of our said court, to wit:

THE President, Directors, and Company of the Planters' Bank of the State of Mississippi,
versus
RICHARD J. BLAND, sheriff of Claiborne county, Benjamin G. Humphreys and John Grissom, his securities.
} On motion. $11775.

Motion for judgment against Richard J. Bland, who was sheriff

of Claiborne county, and against Benjamin G. Humphreys and John Grissom, his securities, for the amount of the execution of the said President, Directors, and Company of the Planters' Bank of the State of Mississippi, against Passmore Hoopes, Joseph H. Moore, and John M. Carpenter, issued 12th December, A. D. 1838, and returnable to the May term of the circuit court of said county, to be holden in the year of our Lord eighteen hundred and thirty-nine, directed and delivered to the said Bland, as sheriff of said county, commanding him to make of the goods and chattels, lands and tenements, of the said Hoopes, Moore, and Carpenter, the sum of ten thousand five hundred and twenty-four dollars and forty-four cents, with interest at the rate of eight per cent. per annum thereon, from the 4th day of December, A. D. 1838, until paid; together with the sum of twenty-four dollars costs of suit. This motion is for judgment for the amount of said execution with five per cent. damages on said amount, and interest at the rate of eight per cent. per annum, until paid; and for the reason that the said Bland, sheriff as aforesaid, failed to return the said execution on the return day thereof.

JAMES H. MAURY,
Attorney for the motion.

Now, on this day come the parties, by their attorneys, and it being proved to the satisfaction of the court that the said President, Directors, and Company of the Planters' Bank of the State of Mississippi, recovered a judgment against Passmore Hoopes, Joseph H. More, and John M. Carpenter, for the sum of ten thousand five hundred and twenty-four dollars and forty-four cents, and costs of suit, &c., at the November term of this court, in the year of our Lord eighteen hundred and thirty-eight, and on the eighth day of December, in said year, and that they regularly sued forth a writ of fieri facias on said judgment, directed to the sheriff of the county of Claiborne, commanding him that of the goods and chattels, lands and tenements, of the said Hoopes, Moore, and Carpenter, he should cause to be made the sum of ten thousand five hundred and twenty-four dollars and forty-four cents, which the said plaintiffs had recovered against them, with interest on the said sum at eight per centum per annum, from the fourth day of December, one thousand eight hundred and thirty-eight, until paid; also the sum of twenty-four dollars, their costs in that behalf expended; and that he should have said moneys before the judge of said court on the fourth Monday of November then next ensuing, to render to the said plaintiffs for their damages and costs aforesaid, and that he should have then there the said writ; and it being proved to the satisfaction of the court that the said writ was delivered to the said Richard J. Bland on the first day of January, in the year of our Lord eighteen hundred and thirty-nine, and that he, the said Bland, was the sheriff of the said county of Claiborne, and that the said Benjamin G. Humphreys and John Grissom were the securities of the said Richard J. Bland in his official bond for the sum of fifteen thousand dollars as sheriff of said county; and it being further proved that the said Bland failed to return the said

writ of fieri facias on the return day thereof; and it being furthermore proved that the said defendants have been duly notified of this motion, that is, the said Richard J. Bland, sheriff, and Benjamin G. Humphreys and John Grissom, his securities in his official bond, it is therefore considered and adjudged by the court here, that the said plaintiffs recover of the said Richard J. Bland, sheriff as aforesaid, and the said Benjamin G. Humphreys and John Grissom, his securities, the sum of eleven thousand seven hundred and seventy-five dollars, being the aggregate amount of the said sum of ten thousand five hundred and twenty-four dollars and forty-four cents, with eight per cent. thereon from the date of the aforesaid recovery to the date hereof, together with interest at the rate of eight per cent. per annum on the said sum of eleven thousand seven hundred and seventy-five dollars from the date hereof till paid; and also the further sum of five hundred and twenty-six dollars and twenty-two cents, being damages on the aforesaid sum of ten thousand five hundred and twenty-four dollars and forty-four cents, at the rate of five per cent., and also the sum of twenty-four dollars, the costs taxed on the said writ of fieri facias, as well as the costs of this motion, and may have execution for the same, &c.

And afterwards, to wit, on the sixth day of July, A. D. eighteen hundred and forty, the clerk of our said court issued a writ of fieri facias, directed to the coroner of Claiborne county, which, with the endorsements and returns thereon, is in the words and figures following, to wit:

The State of Mississippi, to the coroner of Claiborne county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Richard J. Bland, Benjamin G. Humphreys, and John Grissom, late of your county, you cause to be made the sum of eleven thousand seven hundred and seventy-five dollars, which the President, Directors, and Company of the Planters' Bank of the State of Mississippi, lately in our circuit court of said county, have recovered against the said Richard J. Bland, as sheriff of said county, and the said Benjamin G. Humphreys and John Grissom, as his sureties in his official bond, by reason of the failure of the said Bland, as sheriff as aforesaid, to return a writ of fire facias in favor of the said Planters' Bank of the State of Mississippi, against Passmore Hoopes, Joseph H. Moore, and John M. Carpenter, to our circuit court on the return day thereof; also the sum of five hundred and twenty-six dollars and twenty-two cents damages, at the rate of five per centum on the sum of ten thousand five hundred and twenty-five dollars and forty-four cents, the amount of the original judgment on which said writ of fieri facias issued, with interest on the said sum of eleven thousand seven hundred and seventy-five dollars, at eight per centum per annum, from the thirtieth (30th) day of May, 1840, until paid; also the sum of twenty-four dollars, costs taxed in said writ; also the farther sum of five dollars and fifty cents, for costs by them about their motion in that behalf expended, whereof the said Bland, Humphreys, and Grissom are convicted, as appears to us of record; and that you have said moneys before the judge of our circuit

court on the fourth Monday of November next, to render to the said President, Directors, and Company of the Planters' Bank of the State of Mississippi, for their damages and costs aforesaid, and have then there this writ.

Witness the honorable George Coalter, judge of the first judicial district of said State, the fourth Monday of May, one thousand eight hundred and forty.

[SEAL.]

Issued the 6th day of July, 1840. ABM. DAVIS, *Clerk.*

[25.] To November term, 1840. Planters' Bank vs. Richard J. Bland, Benjamin G. Humphreys, John Grissom, fi. fa, "no security of any kind is to be taken," "Abm. Davis, clerk," received July 16, 1840, A. Ingram, coroner, C. C."

"Levied on a close bodied carriage, two horses and harness; also the following negroes, as the property of Benjamin G. Humphreys, viz:

George, Ibbry, Caroline, Tempy, George, William, Julian, Edmund, Harriet, Clueasy, Roinca, Rachael, Nancy, Willoughby, Lucy, Sam, Ocean, Inrin, Fanny, Quash, Eliza, Chainey, Americus, Sarah, Milkah, Murten, Milkah, Hannah, Joseph, Bob, Manuel, Willis, Douglass, Betsey, Allen, Matilda, Fed, Peggy, Leathy, Baley, Perry, Eda, Henry, Ben, Deny, Simon, Patsey, Solomon, Ritler, Vene, Lucilus, Sampson, Angeline, Christian, Louisa, John, Baley, B. Sally, Eveline, Torny, Tommy, Nancy, Eugene, Leonora, Mary, Minta, Marion, Sally, Jerry, William, Emma, Betsey, Caroline, Missouri, Lyons, Sandy, all levied on as above, this 1st day of August, 1840.

A. INGRAM, *Coroner C. C.*

Same levy and same real estate as number 24.

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. C. C. C.*

Also levied on all the right, title, claim, and interest of the defendant, Benjamin G. Humphreys, of, in, and to the undivided one-third of the property known as Stamp's row, (formerly Loring's row,) on Main street, in Port Gibson, this fourth day of August, 1840.

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. Coroner C. C.*

Levied on all the right, title, claim, and interest of the defendant, Richard J. Bland, in and to the following described tract of land, to wit, fractional section No. 12, in township number 10, of range number 3 east, containing five hundred and eighty-five acres; also the southeast quarter of section number 11, in township number 10, of range number 3 east, of the basis meridian of lands directed to be sold at Washington, (Mississippi,) containing about one hundred fifty acres $\frac{2}{100}$, making in all seven hundred and thirty-five acres $\frac{2}{100}$, being a part of the estate of Willis Beageale, deceased.

Same levy as on execution No. 26 and 32. Same levy real estate, as on execution No. 24, and of same date.

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. coroner C. C.*

Sept. 12, 1840. A. Ingram, coroner c. c., pursuant to an advertisement in the Port Gibson correspondent for the time required by law, I did proceed this day to sell the following negro slaves, viz:

George, Ibby, Tempy, George, Sam, Ocian, Invin, and Fanny, being lot No. 1, for -	$1450 00	
Edmond, Harriett, Creasy, Caroline, Missouri, lot No. 2 - - - - -	750 00	
Tommy, Nancy, Eugene, Leonora, Sandy, Mary, Marion, Minta, lot No. 3 - -	760 00	
Americus, Sarah, Milkah, William, Julian, lot No. 4 - - - - -	575 00	
Minta, Milkah, Hannah, Joseph, Bob, Manuel, Willis, Douglas, Betsey, Allen, Matilda, lot No. 5 - - - - -	1000 00	
		$4535 00
Quash, Eliza, Chancy, lot No. 6 - -	380 00	
Perry, Edy, Henry, lot No. 7 - -	310 00	
Ben, Deny, John, lot No. 8 - - -	310 00	
Sally, Jerry, William, Emma, Betsey, Cyrus, lot No. 9 - - - - -	520 00	
Romeo, Rachel, Nancy, Willoby, Lucy, and Baley, No. 10 - - - -	470 00	
Simon, Solomon, Patsey, and Baley, No. 11 -	260 00	
Ritter, Veno, Lucilius, Sampson, Angeline, Christian, Louisa, No. 12 - - -	510 00	
Sally, Eveline, Torny, No. 13 - -	185 00	
Amounts carried up,		$2945 00
Fed, Peggy, Leathy, and Baley, No. 14 -	210 00	
1 close carriage, and 2 horses and geer, No. 15	260 00	
		$470 00
Brought up - - -		4535 00
" " - - -		2945 00
Amount of sales - -		$7950 00

The negroes here named were this day offered according to law, and the several lots were struck off to David G. Humphreys for the sums opposite to each, also the carriage, horses, and geer, he, the said Humphreys, being the highest and last bidder for each and every lot, amounting together to the sum of seven thousand nine hundred and fifty dollars.

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. C. C. C.*

Amount of sales this day, negroes, horses, and carriages -		$7,950 00
Applied to ex'on No. 28, this sum to satisfy -	$1,917 26	
Applied to ex'on No. 29, this sum to satisfy -	387 21	
Applied to ex'on No. 30, this sum to satisfy -	901 97	
Applied to ex'on No. 31, this sum to satisfy -	2,792 48	
Amount applied to the above, being in favor of Grand Gulf Bank - - - - - - - -		5,098 92
Balance of sales remaining -		$2,851 08
Applied to ex'on No. 27, this sum to satisfy. -	1,313 10	
Applied to this ex'on, this sum being balance of these sales - - - - - -	1,537 98	—2,851 08

These two last executions are in favor of Planters' Bank.
Applied for A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. C. C. C.*

Received 23d September, 1840, of A. Ingram, coroner, twelve thousand and three hundred and eighty $\frac{85}{100}$ dollars of the plaintiff's recovery and interest in this case. I, H. Maury, received all costs up to this time, two hundred thirty-nine and $\frac{75}{100}$ dollars. A. Ingram, coroner C. C. Plaintiff's money satisfied, except two hundred six and $\frac{85}{100}$ dollars, 23d September, 1840.

A. INGRAM, *Coroner C. C.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss:

I, Dan. McDougall, clerk of the circuit court, in and for the county of Claiborne, and State aforesaid, hereby certify, that the foregoing eight pages and this page contain a true and correct copy of the record, process, and papers, in the foregoing stated case, as appears of record and on file in my office.

Given under my hand and seal of office, this first day of November, A. D. eighteen hundred and forty-four.

[L. S.] DAN. McDOUGALL, *Clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county ss:

I, George Coalter, judge of the first judicial district of said State, do hereby certify, that Dan. McDougall is the duly elected and qualified clerk of the circuit court, in and for said county and State, and that his said attestation is in due form of law. Given under my hand, this first day of November, A. D. eighteen hundred and forty-four.

GEO. COALTER.

Copy of exhibit B.

THE STATE OF MISSISSIPPI,
Claiborne county, ss:

Pleas before the honorable George Coalter, judge of the first judicial district of the State of Mississippi, at a circuit court began and held at

Sept. 12, 1840. A. Ingram, coroner c. c., pursuant to an advertisement in the Port Gibson correspondent for the time required by law, I did proceed this day to sell the following negro slaves, viz:

George, Ibby, Tempy, George, Sam, Ocian, Invin, and Fanny, being lot No. 1, for -	$1450 00	
Edmond, Harriett, Creasy, Caroline, Missouri, lot No. 2 - - - - -	750 00	
Tommy, Nancy, Eugene, Leonora, Sandy, Mary, Marion, Minta, lot No. 3 - -	760 00	
Americus, Sarah, Milkah, William, Julian, lot No. 4 - - - - -	575 00	
Minta, Milkah, Hannah, Joseph, Bob, Manuel, Willis, Douglas, Betsey, Allen, Matilda, lot No. 5 - - - - -	1000 00	
		$4535 00
Quash, Eliza, Chancy, lot No. 6 - -	380 00	
Perry, Edy, Henry, lot No. 7 - -	310 00	
Ben, Deny, John, lot No. 8 - - -	310 00	
Sally, Jerry, William, Emma, Betsey, Cyrus, lot No. 9 - - - - -	520 00	
Romeo, Rachel, Nancy, Willoby, Lucy, and Baley, No. 10 - - - -	470 00	
Simon, Solomon, Patsey, and Baley, No. 11 -	260 00	
Ritter, Veno, Lucilius, Sampson, Angeline, Christian, Louisa, No. 12 - - -	510 00	
Sally, Eveline, Torny, No. 13 - -	185 00	
Amounts carried up,		$2945 00
Fed, Peggy, Leathy, and Baley, No. 14 -	210 00	
1 close carriage, and 2 horses and geer, No. 15	260 00	
		$470 00
Brought up - - -		4535 00
" " - - -		2945 00
Amount of sales - -		$7950 00

The negroes here named were this day offered according to law, and the several lots were struck off to David G. Humphreys for the sums opposite to each, also the carriage, horses, and geer, he, the said Humphreys, being the highest and last bidder for each and every lot, amounting together to the sum of seven thousand nine hundred and fifty dollars.

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. C. C. C.*

Amount of sales this day, negroes, horses, and carriages -		$7,950 00
Applied to ex'on No. 28, this sum to satisfy -	$1,917 26	
Applied to ex'on No. 29, this sum to satisfy -	387 21	
Applied to ex'on No. 30, this sum to satisfy -	901 97	
Applied to ex'on No. 31, this sum to satisfy -	2,792 48	
Amount applied to the above, being in favor of Grand Gulf Bank - - - - - - - -		5,098 92
Balance of sales remaining -		$2,851 08
Applied to ex'on No. 27, this sum to satisfy -	1,313 10	
Applied to this ex'on, this sum being balance of these sales - - - - - -	1,537 98	—2,851 08

These two last executions are in favor of Planters' Bank.
Applied for A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *Dy. C. C. C.*

Received 23d September, 1840, of A. Ingram, coroner, twelve thousand and three hundred and eighty $\frac{85}{100}$ dollars of the plaintiff's recovery and interest in this case. I, H. Maury, received all costs up to this time, two hundred thirty-nine and $\frac{75}{100}$ dollars. A. Ingram, coroner C. C. Plaintiff's money satisfied, except two hundred six and $\frac{85}{100}$ dollars, 23d September, 1840.

A. INGRAM, *Coroner C. C.*

THE STATE OF MISSISSIPPI,
Claiborne county, ss:

I, Dan. McDougall, clerk of the circuit court, in and for the county of Claiborne, and State aforesaid, hereby certify, that the foregoing eight pages and this page contain a true and correct copy of the record, process, and papers, in the foregoing stated case, as appears of record and on file in my office.

Given under my hand and seal of office, this first day of November, A. D. eighteen hundred and forty-four.
[L. S.]

DAN. McDOUGALL, *Clerk.*

THE STATE OF MISSISSIPPI,
Claiborne county ss:

I, George Coalter, judge of the first judicial district of said State, do hereby certify, that Dan. McDougall is the duly elected and qualified clerk of the circuit court, in and for said county and State, and that his said attestation is in due form of law. Given under my hand, this first day of November, A. D. eighteen hundred and forty-four.

GEO. COALTER.

Copy of exhibit B.

THE STATE OF MISSISSIPPI,
Claiborne county, ss:

Pleas before the honorable George Coalter, judge of the first judicial district of the State of Mississippi, at a circuit court began and held at

the court-house, in and for the county of Claiborne, and State aforesaid, on the fourth Monday and twenty-fifth day of May, A. D. 1840.

THE PRESIDENT, Directors, and Company of the Planters' Bank of the State of Mississippi, plaintiffs,
versus
RICHARD J. BLAND, sheriff of Claiborne county, Benjamin G. Humphreys and John Grissom, his securities, defendants.

Be it remembered, that at the May term of our said court, A. D. eighteen hundred and forty, the plaintiffs in the above stated case, by attorney, entered upon the "motion docket" of our said court their certain motion, which is in the words and figures following, to wit:

THE PRESIDENT, Directors, and Company of the Planters' Bank of the State of Mississippi, plaintiffs,
versus
RICHARD J. BLAND, sheriff of Claiborne county, Benjamin G. Humphreys and John Grissom, his securities, defendants. } $2,674 75. 297

Motion for judgment against Richard J. Bland, who was sheriff of the county of Claiborne, State of Mississippi, and against Benjamin G. Humphreys and John Grissom, his securities, for the amount of the execution of the President, Directors, and Company of the Planters' Bank of the State of Mississippi, against Robert W. Cambell, Joseph O. Pierson, and Joseph H. Moore, issued the 21st January, 1839, and returnable to the May term of the circuit court of said county, holden in the year of our Lord 1839, directed and delivered to the said Bland, as sheriff of said county, commanding him, that of the goods and chattels, lands and tenements, of the defendants therein mentioned, he should cause to be made the sum of thirty-seven hundred and eighteen dollars and seventy-eight cents, with interest on $3,702 66 from the 29th day of November, A. D. 1836, until paid, together with the sum of thirty-nine dollars and sixty-four cents clerk's and sheriff's fees. This motion is for judgment against the said Bland, Humphreys, and Grissom, for the amount due on said execution, with five per cent. damages on said amount, and interest at the rate of eight per cent. per annum till paid, for the reason that said Bland failed to return said execution on the return day.

MAURY & SAYER,
For motion.

Now, on this day came the parties, and it being proven to the satisfaction of the court that the said President, Directors, and Company of the Planters' Bank of the State of Mississippi, sued forth their writ of fieri

facias, directed to the sheriff of Claiborne county, commanding him, that of the goods and chattels, lands and tenements, of Robert W. Campbell, Joseph O. Pierson, and Joseph H. Moore, he should make the sum of three thousand seven hundred and eighteen dollars and seventy-eight cents, with interest on ($3,702 66) thirty-seven hundred and two dollars and sixty-six cents from the 29th day of November, 1836, until paid; and also for the further sum of thirty-nine dollars and sixty-four cents costs, and that he should have said sums of money before the judge of this court on the fourth Monday of May next, after the issuance of said writ, to render, &c., and that he should have then and there the said writ; and it being proven that the said writ of fieri facias was delivered to the said Richard J. Bland, as sheriff of said county, and that the said Benjamin G. Humphreys was one of his sureties on his official bond, for the sum of fifteen thousand dollars, and it being proven that the said Bland failed to return the said writ of fieri facias on the return day thereof, and that the said Bland and Humphreys have been duly notified of this motion, and it being shewn on part of the said defendants that a former recovery had been had against them, by virtue of their liability on said bond, to the amount of ($12,325 22) twelve thousand three hundred and twenty-five dollars and twenty two cents, leaving a balance of ($2,674 75) two thousand six hundred and seventy-four dollars and seventy-five cents, of said bond outstanding and unextinguished; it is therefore adjudged by the court, that the said President, Directors, and Company of the Planters' Bank of the State of Mississippi recover of the said Richard Bland and Benjamin G. Humphreys the said sum of twenty-six hundred and seventy-four dollars and seven-five cents, the amount of said balance so running on said bond, and that they have their execution to collect the same; and this motion as to the said Grissom is discontinued, he not having been served with notice.

And afterwards, to wit, on the *third* day of July, A. D. 1840, the clerk of our said court issued a writ of fieri facias, directed to the coroner of our county aforesaid, in the words and figures following, to wit:

The State of Mississippi, to the coroner of Claiborne county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Richard J. Bland and Benjamin G. Humphreys, late of your county, you cause to be made the sum of twenty-six hundred and seventy-four dollars and seventy-five cents, which the President, Directors, and Company of the Planters' Bank of the State of Mississippi, lately in our circuit court of said county, have recovered against the said Richard J. Bland, as sheriff of said county, and the said Benjamin G. Humphreys as one of his sureties in his official bond, by reason of the failure of said Bland, as sheriff as aforesaid, to return a writ of fieri facias in favor of the President, Directors, and Company of the Planters' Bank of the State of Mississippi, against Robert W. Campbell, Joseph O. Pierson, and Joseph H. Moore, to our circuit court on the return day thereof, the said sum being the amount for which they are liable on said bond after deducting the amount of a former recovery on the

same for twelve thousand three hundred and twenty-five dollars and twenty-two cents, with interest on the said sum of twenty-six hundred and seventy-five dollars and seventy-five cents, at eight per centum per annum, from the tenth day of June, 1840, until paid; and the sum of five dollars and fifty cents for costs by them about their suit in that behalf expended, whereof the said Bland and Humphreys *as* convicted, as appears to us of *of* record; and that you have said moneys before the judge of our circuit court on the fourth Monday of November next, to render to the said President, Directors, and Company of the Planters' Bank of the State of Mississippi, for their damages and costs aforesaid, and have then there this writ.

Witness the honorable George Coalter, judge of the first judicial district of the said State, the fourth Monday of May, one thousand eight hundred and forty.

Issued the third day of July, 1840.

A. DAVIS, *Clerk.*

Received July 16th 1840. A. INGRAM, *Coroner for C. C.*

Levied on all the right, title, claim, and interest of the defendant, Benjamin G. Humphreys, of, in, and to the following described tracts, lots, pieces, and parcels of lands, viz: Lot No. in fractional section No. 45, township No. 13, range 3 east, containing 116 acres; and west half of northwest fourth of section No. 46, township 13, range 3 east, containing $82\frac{10}{100}$ acres; east half of southwest fourth of section No. 46; W. $\frac{1}{2}$ of southwest $\frac{1}{4}$ of section 46, township 13, range 3 east, containing $82\frac{10}{100}$ acres; township 13, range 3 east, containing $82\frac{10}{100}$ acres; (lots number 4 and 5, section 59, township 13, range 3 east; and lot No. 4, section 60, township 13, range 2 east;) last three lots contain 179 acres; lot No. 2, section 60, township 13, range 3 east, containing 88 acres; lot No. 3, section 45, township 13, range 3 east, containing $96\frac{80}{100}$ acres; and east $\frac{1}{2}$ of the John Anderton grant, containing 329 $\frac{30}{100}$ acres; also a tract of land known as the Quine tract, containing 160 acres; the above described lands lay adjoining and situate on the waters of Big Black, in Claiborne county, containing, together, twelve hundred fifteen and $\frac{40}{100}$ acres (more or less); also the northeast $\frac{1}{4}$ of southeast $\frac{1}{4}$ of section 4, township 12, range 4 east, containing $38\frac{88}{100}$ acres; east $\frac{1}{2}$ of southwest $\frac{1}{4}$, and west $\frac{1}{2}$ of southeast $\frac{1}{4}$ of section No. 3, township 12, range 4 east, containing $156\frac{21}{100}$ acres; east $\frac{1}{2}$ of southwest quarter and west $\frac{1}{2}$ of southeast $\frac{1}{4}$ of section 61, township 13, range 4 east, containing $164\frac{11}{100}$ acres; east $\frac{1}{2}$ of northwest $\frac{1}{4}$, and southeast $\frac{1}{4}$ of southeast $\frac{1}{4}$ of section 4, township 12, range 4 east, containing $116\frac{64}{100}$ acres; lot No. 3, and west $\frac{1}{2}$ of lot No. 2, section 10, township 12, range 4 east, containing $119\frac{10}{100}$ acres; these last named lands lay adjoining to other on the waters of the north fork of Bayou Pierre, in the aforesaid county, containing together five hundred and ninety-three acres (more or less); also all the right, title, claim, and interest of said defendant, of, in, and to the undivided one-third part of the lots, and parts of lots, and buildings formerly known as Loring's (now Stamp's) row, being that portion of lots two and three, in square nine, beginning at the northwest corner of said lot No. 2; thence with the west boundary of said lots No.

2 and 3, up Main street, to the southwest corner of lot No. 3, at the junction of Main and Walnut or Bank street; thence up to the southern boundary of said lot No. 3, one hundred and twenty-three feet to a post; thence in a northeasterly direction, on a line parallel with Main street, one hundred and nienty-six feet, to the division line between lots one and two; thence, in a westerly direction upon said division line, to the place of beginning upon said Main street, as by reference to the plan of the town of Port Gibson will appear.

A. INGRAM, *Coroner C. C.*

August 1, 1840.

The same levy and same property, as in execution No. 25, August 1st, 1840. A. INGRAM, *Coroner C. C.*

See levy on lands and town lots within.

A. K. SHEIFER, *D. C. C.*
For A. INGRAM, *Coroner C. C.*

Same levy as in No. 26, being plantation, stuff, furniture, &c., &c., the property of G. B. Flowers, one of the defendants, made 25th August, 1840. A. INGRAM, *Coroner C. C.*

Same levy as No. 25, being on lands, defendant, R. J. Bland, made 12th September, 1840. A. INGRAM, *Coroner, C. C.*

This day, after lawful notice in the Port Gibson Correspondent, was exposed to public sale, at the court house of Claiborne county, town aforesaid, the lands and town lots levied on with this and other cases against the same defendants, to wit:

Twelve hundred and fifteen $\frac{40}{100}$ acres, lying on Big Black in one body, was offered, and struck off to David G. Humphreys for the sum of six thousand five hundred dollars, he, the said Humphreys, being the last and highest bidder at said sum - - - - - $6,500 00

Five hundred and ninety-three acres, more or less, lying on the waters of the north fork of Bayou Pierre, was also offered, and struck off to the said David G. Humphreys, he being the last and highest bidder for the same, at eighteen hundred dollars - - - - - - - - - - 1,800 00

The one-third part of the property in the town of Port Gibson, known as "Loring's or Stamp's Row," was also offered, and struck off to the said David G. Humphreys at the sum of four thousand five hundred dollars, he, the said Humphreys, being the last and best bidder - - - 4,500 00

This 21st day of September, 1840.

$12,800 00

A. INGRAM, *Coroner C. C.*

Applied to this case this sum - - - $2,779 98
Applied to execution No. 25 - - - 10,020 02

12,800 00

A. INGRAM, *Coroner C. C.*
By A. K. SHEIFER, *D. C. C. C.*

Received 23d September, 1840, of A. Ingram, coroner, twenty-seven hundred and seventy-nine dollars and fifty-four cents, plaintiff's money in this case. J. H. MAURY.

THE STATE OF MISSISSIPPI, *Claiborne county, ss:*

I, Dan. McDougall clerk of the circuit court in and for the county of Claiborne, and State aforesaid, do hereby certify, that the foregoing seven pages contain a true and correct copy of the record, process, and papers in the foregoing stated case, as appears of record and on file in my office.

Given under my hand and seal of office, this second day of November, A. D. eighteen hundred and forty four.

[L. S.] DAN. McDOUGALL, *Clerk.*

THE STATE OF MISSISSIPPI, *Claiborne county, ss:*

I, George Coalter, judge of the first judicial district of said State, do hereby certify, that Dan. McDougall is the duly elected and qualified clerk of the circuit court, in and for said county and State, and that his said attestation is in due form of law.

Given under my hand, this second day of November, A. D. eighteen hundred and forty-four. GEORGE COALTER.

Copy of exhibit C.

United States circuit court, southern district of Mississippi, November term, A. D. 1844.

A. G. McNUTT use of Leggett, Smith and Lawrence, vs. R. J. BLAND, B. G. Humphreys, and John Grissom. } In debt.

And now, at this day, to wit, on the first Monday of November, A. D. 1844, until which day the plea aforesaid was last continued, comes the said defendant Humphreys, by his attorney, and saith, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, the said Humphreys, because he saith, that after the last continuance of this cause, to wit, after the November term, 1839, of this court, and before this day, to wit, at the May term of the circuit court of the county of Claiborne, in the State of Mississippi, A. D. 1840, at a regular term thereof, to wit, at the district aforesaid, on motion in said court for that purpose, the President, Directors, and Company of the Planters' Bank of the State of Mississippi, by the consideration and judgment of the said court, recovered against the said defendants, Bland, Humphreys, and Grissom, the sum of $12,325.22, being part of the penalty of the said writing obligatory in the said plaintiff's declaration in this case mentioned, for a breach of the condition of the said writing obligatory; and also that the said President, Directors, and Company, at the same term of said circuit court, on like motion, recovery against the said Bland and Humpreys the further sum of $2,674.75, being the residue of the penalty of said writing obligatory for another breach of the condition thereof; and the said defendant Humphreys further in fact saith, that afterwards,

to wit, on the twenty-third day of September, A. D. 1840, at the district aforesaid, he, the said Humphreys, fully paid and satisfied to the President, Directors, and Company of the said Planters' Bank the said amount of the said two judgments so recovered as aforesaid, whereby the entire penalty of said writing obligatory in said declaration mentioned has been satisfied and discharged.

And this he, the said Humphreys, is ready to verify; wherefore he prays judgment, if the said plaintiffs, who sues aforesaid, ought further to have or maintain his aforesaid action thereof against him, &c.

H. T. ELLETT, *Attorney for said Defendant Humphreys.*

UNITED STATES OF AMERICA,

Southern district of Mississippi:

Personally appeared before the undersigned, commissioner for taking affidavits in the circuit court of the United States for the district aforesaid, Benjamin G. Humphreys, who made oath that the facts stated in foregoing plea are true. BENJ. G. HUMPHREYS.

Sworn and subscribed, this 2d day of November, 1844.

R. PARKINSON, *J. P. and Comr.*

U. S. circuit court, southern district of Mississippi.

A. G. McNUTT, use of Leggett, Smith, and Lawrence, vs. RICHARD J. BLAND, Benj. G. Humphreys, & John Grissom.

Benjamin G. Humphreys, one of the above defendants, being duly sworn according to law, deposeth and saith, that since the rendition of the judgment in favor of the defendants in the above case, to wit, at May term, 1840, of the circuit court of Claiborne county, Mississippi, recoveries were had by the Planters' Bank against said Bland and him, said Humphreys, for the full amount of the penalty of the official bond of said Bland, given in November, 1837, and set forth in the declaration in this suit, on which this defendant, Humphreys, and said Grissom were sureties; and further, that the property of this defendant, Humphreys, was sold on said recoveries, and the full amount thereof and the penalty of said sheriff's bond was made and collected by the coroner of Claiborne county, by the sale of the property of this defendant, on executions issuing on the judgments so recovered against him as surety on said sheriff bond; and he prays to be permitted to plead the same as his defence in the above action.

BENJ. G. HUMPHREYS.

Sworn and subscribed before me, this 2nd day of November, 1844.

R. PARKINSON, *Commissioner.*

And afterwards, to wit, at the May term, 1845, to wit, on the 17th day of May, A. D. 1845, the following order was made and entered on the minutes of said court, to wit: Ordered by the court, that the injunction

be granted as prayed for, on complainant giving bond in a penalty equal to double the amount of the judgment at law sought to be enjoined, with good and sufficient security conditioned according to law, to be approved by the clerk of this court; and sixty days are allowed said complainant to perfect said bond.

Copy of Bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these present, that we, Benjamin G. Humphreys, James H. Maury, and Abram B. Bridges, are held and firmly bound unto Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, partners, under the firm of Leggett, Smith and Lawrence, in the just and full sum of twelve thousand eight hundred and eighty $\frac{12}{100}$ dollars, lawful money of the United States, to be paid to the said Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, partners as aforesaid, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the eighth day of July, A. D. 1845.

The condition of the above obligation is such, that whereas the above bound Benjamin G. Humphreys has obtained from the honorable the circuit court of the United States, for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain judgment in said court, against the said Benjamin G. Humphreys, for the sum of six thousand three hundred and fifty-five dollars $\frac{33}{100}$ dollars, on the 14th May, 1845, with interest from date, and costs at the suit of Alexander G. McNutt, governor of the State of Mississippi, and successor to Charles Lynch, for the use of the said Leggett, Smith and Lawrence.

Now, if the said Benjamin G. Humphreys, James H. Maury, and Abram B. Bridgers, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due, and to become due, to the said Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, under the firm of Leggett, Smith and Lawrence, the plaintiffs in the said judgment, and also all such costs and damages as shall be awarded against them, then this obligation to be void, otherwise to be and remain in full force and virtue.

B. G. HUMPHREYS, [SEAL.]
By H. T. ELLETT, *Attorney*.
JAMES H. MAURY, [SEAL.]
By H. T. ELLETT, *Attorney*.
A. B. BRIDGERS, [SEAL.]
By H. T. ELLETT, *Attorney*.

Sealed and delivered in presence of—

Endorsement filed and approved July 8th, 1845.
W. H. BROWN, *Clerk*.

And afterwards, to wit, on the 29th day of September, A. D. 1845, the following writ of subpœna issued in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Southern district of Mississippi, ss:

The President of the United States, to Thomas Leggett, jr., Samuel Smith, and Smith Lawrence, greeting:

For certain causes offered before us in our circuit court for the southern district of Mississippi, sitting in chancery, we command you, that, laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court, in and for the said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of November next, to answer to a bill of complaint, exhibited against you by Benjamin G. Humphreys, complainant, in our said court; and further to do and receive what our said court shall consider in this behalf.

Hereof fail not as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. one thousand eight hundred and forty-five, and in the 69th year of the independence of the United States.

Issued the 29th day of September, 1845.

W. H. BROWN, *Clerk*
Per C. H. ROGERS, *D. C.*

The defendants in this case are requested to enter their appearance in this suit in the clerk's office, on or before the next rule day, otherwise the bill may be taken pro confesso.

W. H. BROWN, *Clerk.*

To the marshal of the southren district of Mississippi, to execute and return.

Marshal's return.—Executed 6th October, 1845.

THOS. FLETCHER, *Marshal.*
Per P. FLETCHER, *Deputy.*

Afterwards, to wit, on the 11th day of November, 1845, the defendants, by their solicitors Mason and Burwell, filed in said court the following demurrer, in the words and figures following, to wit

The demurrer of the defendants Leggett, Smith, and Lawrence to the bill of Benjamin Humphreys, filed in the said court against them.

To the honorable judges of the circuit court of the United States for the southern district of Mississippi, sitting in chancery.

These defendants, by protestation not admitting the allegations of said bill or any of them to be true, do demur to the said bill, because they say, that there is no equity in said bill as against these defendants, and that by reason of the allegations in said bill contained the said complainant is not entitled in equity to the relief prayed for in the said bill, or to any relief against these defendants; wherefore because no case is made

in said bill which entitles the said complainant to relief in a court of chancery, the said defendants do demur to said bill, and pray that the same may be dismissed, and that these defendants may be adjudged to have against the said complainant his costs herein expended, &c. And they will ever pray.

MASON & BURWELL,
For defendants Leggett, Smith, and Lawrence.

Joinder in demurrer in short by consent.

ELLETT & W. & A. YERGER,
Solicitors for complainants.

And afterwards, to wit, at the November term of the court first aforesaid, to wit, on the 17th day of November, in the year of our Lord one thousand eight hundred and forty-six, until which time this cause was regularly continued. Be it remembered, that this cause came on to be heard upon the bill of complainant and the demurrer of defendants thereto, and after argument, the court being satisfied that the complainant is not entitled to the relief asked for by said bill, it is therefore ordered, adjudged, and decreed, and the chancellor hereby orders, adjudges, and decrees, that said bill be dismissed, and that complainant pays the costs of this suit, to be taxed.

November 17th, 1846.

S. J. GHOLSON.

From which decree the complainant prays an appeal to the Supreme Court of the United States, which is granted, on his giving bond for the costs of suit by agreement, and also that said bond be approved by the clerk.

Copy of bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Benjamin G. Humphreys and William Yeiger, are held and firmly bound, unto Leggett, Smith and Lawrence, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Leggett, Smith and Lawrence, their lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 20th day of January, A. D. one thousand eight hundred and forty-seven. The condition of this obligation is such, that whereas, at a term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1846, a decree was rendered by said court in favor of the said Leggett, Smith and Lawrence, against the said Benjamin G. Humphreys, by which a bill filed on the chancery side of said court, in favor of the said Humphreys against the said Leggett, Smith and Lawrence, was ordered to be dismissed at the costs of the said Humphreys; from which decree the said Humphreys prayed an appeal to the Supreme Court of the

United States to reverse said decree; which was granted by agreement of counsel, upon his entering into this bond for the costs of said appeal.

Now, if the said Benjamin G. Humphreys shall prosecute his said appeal to effect, or shall well and truly pay and satisfy the amount of all such costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Humphreys, shall fail to make his appeal good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

BENJ. G. HUMPHREYS, [SEAL.]
W. YERGER, [SEAL.]
Attest: GEO. W. GORHAM.

Endorsed: Filed and approved, January 20th, 1847.
W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of Missis sippi, circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing fifty-one pages contain a full, true, and complete transcript of the record of the decree in the case therein stated, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Jackson, this 18th day of February, A. D. 1847. W. H. BROWN, *Clerk.*

Filed 22d October, 1847.